

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

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FRANKLIN B. GIL-REYES,

Petitioner,

-versus-

UNITED STATES OF AMERICA,

Defendant.

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ORDER

12-cv-5574
12-cv-5575

JOHN GLEESON, United States District Judge:

On October 22, 2012, Petitioner Franklin B. Gil-Reyes filed a *pro se* motion which purported to be a motion pursuant to 28 U.S.C. § 2255 (“§ 2255”). In an Order dated November 13, 2012, I construed this motion as raising two issues: (1) a motion to file a successive habeas petition; and (2) a challenge to his alleged exclusion from benefits and privileges reserved for United States citizens, including a one year reduction of sentence through a drug program and a Unicor job. As to the first issue, I transferred his motion for a successive habeas petition to the United States Court of Appeals for the Second Circuit. *See Gil-Reyes v. United States of America*, 12 Civ 5574 (filed Nov. 13, 2012), ECF Doc. 2. As to the second issue, I directed the United States to address whether a challenge to his exclusion from job programs is properly brought in this district; and, assuming this is the proper forum, the merits of the allegation. *See Gil-Reyes v. United States of America*, 12 Civ 5575 (filed Nov. 13, 2012), ECF Doc. 3.

On February 7, 2013, Gil-Reyes filed a motion indicating that he did not know that his motion would be construed as a successive habeas motion and seeking to withdraw the motion (without prejudice) so he can re-submit it properly. *See Mot. to Withdraw*, Feb. 7, 2013.

In light of this Motion, the Clerk of this Court is respectfully requested to contact the Clerk for the United States Court of Appeals for the Second Circuit to inform them that Gil-Reyes seeks to withdraw, without prejudice, his successive habeas petition.

It is not clear whether Gil-Reyes seeks also to withdraw the portion of his motion challenging his exclusion from programs allegedly reserved for United States citizens. He is requested to clarify on or before March 5, 2013 whether he seeks to withdraw this aspect of his motion.

JOHN GLEESON, U.S.D.J.

Dated: February 13, 2013
Brooklyn, New York